



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/149310

PRELIMINARY RECITALS

Pursuant to a petition filed May 09, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on July 03, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that Petitioner was over-issued FoodShare benefits in the amount of \$733.00 for the period of March 14, 2012 through July 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Paul Fredrickson, Income Maintenance Worker Advanced
Milwaukee Enrollment Services
1220 W. Vliet St.
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 26, 2013, the agency sent Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], asserting that Petitioner was over-issued FoodShare benefits in the

amount of \$1,835.00 for the period of October 1, 2011 to February 29, 2012. The notice indicated that the over-issuance was caused by client error, specifically a failure to report income. (Exhibit 4, pg. 22 and Exhibit 3, pgs. 54-55)

3. On February 26, 2013, the agency sent Petitioner a second Notification of FoodShare Overissuance, claim number [REDACTED], asserting that Petitioner was over-issued FoodShare benefits in the amount of \$974.00 for the period of March 14, 2012 to July 31, 2012. The notice indicated that the over-issuance was caused by client error. (Exhibit 4, pgs. 23 and 33-34)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on March 14, 2013. (Exhibit 3, pg. 2; Exhibit 4, pg. 22)
5. An administrative law judge (ALJ) from the Division of Hearings and Appeals conducted a hearing on April 10, 2013 and on April 11, 2013 remanded the matter back to the agency with the following instructions: “a) the petitioner was entitled to a FS earned income deduction during the FS overpayment period of March 14, 2012 to July 31, 2012; and b) MES would review the most reliable evidence of petitioner’s earned income during the overpayment period, provide an earned income deduction and then re-determined, re-calculate and issue a new FS overpayment notice to the petitioner for some or all of the overpayment period of March 14, 2012 to July 31, 2012...” (Exhibit 4, pg. 23)
6. At the April 10, 2013 hearing, the agency agreed to rescind claim number [REDACTED], because it determined that Petitioner had, in fact, correctly reported her income when she provided a payroll register from her employer, but the agency misread/misinterpreted the information in the register. (Testimony of Mr. Fredrickson; Exhibit 4, pg. 23)
7. On April 22, 2013, the agency sent Petitioner a new Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating that Petitioner was overissued FoodShare benefits in the amount of \$733.00 for the period of March 14, 2012 to July 31, 2012. The notice further indicated that the over-issuance was caused by non-client error and Petitioner was given the earned income deduction. (Exhibit 4, pgs. 16-18)
8. Petitioner filed a new request for fair hearing that was received by the Division of Hearings and Appeals on May 9, 2013.
9. Petitioner’s household consists of two people and there are no elderly, blind or disabled members. (Testimony of Petitioner)
10. Petitioner currently pays \$800 in rent, but during the time in question, Petitioner paid \$600 per month in rent. (Testimony of Petitioner; Exhibit 3, pgs. 37, 66-70)
11. Petitioner’s wages are accurately reflected in a payroll register that she obtained from her employer. (Testimony of Petitioner; Exhibit 4, pg. 27)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), emphasis added; see also FoodShare Wisconsin Handbook, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

Petitioner did not dispute the fact that she received the benefits in question, nor did she contest the Department's determination of her income. In reviewing the overpayment worksheets, it appears the agency correctly calculated Petitioner's income, but made one error with regard to the overpayment for March 2012.

The agency correctly determined Petitioner's net income to be \$1236.67. Individuals, in a household of 2, with a net income of \$1236.67 qualify for a FoodShare allotment of \$16.00 per month. *FSH §8.1.2*. Petitioner was paid \$307.00 in FoodShare benefits in March 2012. Consequently, the overpayment for March 2012 should be \$291.00 (\$307.00 - \$16.00).

After making the aforementioned correction, the total overpayment for the period of March 2012 through July 2012 should be \$728.00, not \$744 as reported by the agency in the Notification of FoodShare Overissuance.

It should be noted that the overpayment worksheets correctly indicate that Petitioner was **underpaid** FoodShare benefits for July 2012, in the amount of \$11.00. Consequently, the correct overpayment period would be March 1, 2012 through June 30, 2012.

Petitioner argues that it is not fair to force her to repay an over issuance of FoodShare benefits, when the error was not hers. However, an ALJ does not have equitable authority and as such, cannot deviate from the law as it written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993) and *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944)

CONCLUSIONS OF LAW

The agency correctly determined Petitioner was over issued FoodShare benefits between March 1, 2012 and June 30, 2012, due to non-client error.

The agency incorrectly calculated the amount of the overpayment.

THEREFORE, it is

ORDERED

That the agency amend claim [REDACTED] to reflect the correct overpayment period of March 1, 2012 through June 30, 2012, to reflect the correct allotment amount of \$16 for March of 2012 and to reflect the correct overpayment amount of \$728.00 for the period between March 1, 2012 and June 30, 2012. The agency shall send a copy of the amended claim to Petitioner. The agency shall take all administrative steps to necessary to complete these tasks within 10 days of this decision.

In all other respects the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

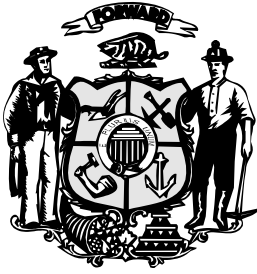
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of July, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 16, 2013.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability